

Nays—Messrs. Blainey, Bolsinger, Cameron, Cook, Davis, Drach, Frewen, Garcia, Gordon, Heistand, Hoyt, Hurd, Hutt, Lehrritter, MacKenzie, McGuire, Melton, Mulqueen, O'Connell, Pomeroy, Rowan, Spelts, Steen, Street, Wilder—Total, 25.

Absent, Excused and Not Voting—Dulin, Fetzer, Gleason, Sherwin, White—Total, 5.

Speaker announced that the motion prevailed, and requested Representative Thomas to notify the Senate that the House was now ready to meet with it in joint session for the purpose of canvassing the vote for State officers.

The Sergeant-at-Arms announced the Honorable Senate.

The joint session of the House and Senate was then called to order by the Speaker.

Speaker ordered the Secretary of the Senate to proceed with the roll call of the Senate.

Present—Senators Alexander, Anfenger, Berela, Booth, Cornforth, De La Vergne, Drake, Ewing, Hill, Hughes, Jefferson, Kennedy, Lewis, McCarthy, Millard, Morgan, Owen, Parks, Pryor, Robertson—Total, 20.

Absent, Excused and Not Voting—15.

The Speaker then ordered the Chief Clerk of the House to proceed with the roll call of the House.

The following Representatives answered to their names, to wit:

Present—Messrs. Adamson, Alexander, Baer, Barber, Barela, Blainey, Bolsinger, Breckenridge, Bromley, Cameron, Cannon, Church, Cook, Davis, Dodge, Drach, Dungan, Fetzer, Frewen, Garcia, Gleason, Gordon, Griffith, Healey, Heistand, Hoyt, Hudgins, Hurd, Hutt, Johnson, Keezer, King, Lehrritter, MacKenzie, MacLeod, McEwen, McGuire, McIntyre, Melton, Metz, Miller, Mulqueen, O'Connell, Pomeroy, Radinsky, Rowan, Smith, Spelts, Steen, Stephen, Sterling, Stewart, Stree, Thomas, Thompson, Townsend, Valdez, Vance, Wilder, Wolaver, Zingg. Mr. Speaker—Total, 62.

Absent and Excused—Messrs. Dulin, Sherwin, White—Total, 3.

The Speaker announced that there was a quorum present.

Mr. Griffith presented a protest signed by James H. Peabody, protestant, against the canvassing of the so-called returns that may be presented from the city and county of Denver, and the Clerk read the same, which is as follows.

Denver, Colorado, January 4, 1905.

To the Honorable Senate and House of Representatives of the State of Colorado, Assembled in Joint Convention for the Purpose of Canvassing the Votes Cast at the Election on November 8, 1904, for State Officers.

Gentlemen—As you are advised, there is a suit, in which the State of Colorado is plaintiff, now pending before the Honorable Supreme Court of this State, relating to the conduct of the general State election of this State, held November 8, 1904, in the city and county of Denver, and that in said suit it has developed that a conspiracy was entered into between the Democratic officials in control of said election in said city and county, and other parties hostile to the Republican party of this State, to defeat the election of the nominees of the Republican party, whose names appeared on the Republican ticket, for said election, and particularly to defeat the election of this protestant.

In support of the existence of such official conspiracy I call attention to the following facts:

(a) In certain contempt proceedings in said suit there have thus far been about twenty-nine (29) persons fined and imprisoned for violating the court's injunction in said suit. This represents the result of the investigations in only eight precincts out of a total of two hundred and four (204) of the said city and county.

The said violation of the court's injunction consisted of false counting of votes and of wholesale ballot box stuffing in favor of and for the benefit of Hon. Alva Adams, and other candidates on the Democratic ticket.

(b) On December 17, 1904, in said suit, the Supreme Court, speaking through Chief Justice Gabbert in reference to the said election as conducted in four (4) precincts of said city and county, used the following language:

"It appears that certain of the election officials in Precinct 10, of Ward 7, and Precincts 6, 8 and 9, of Ward 5, committed gross frauds at the last election, that these frauds were in direct violation of the mandates of the injunction heretofore issued by this court, and were of such a character that the lawful result of the election in these precincts, if ascertainable at all, can only be determined from testimony independent of the election certificates."

(c) The court thereupon directed that as to said four (4) precincts, the canvass of the vote (which gave Hon. Alva Adams for the office of Governor a plurality of 907 votes), should not be made or certified to the Secretary of State. The above four precincts, according to my best information, furnish a fair index to the fraud that will be found in not less than about one hundred (100) precincts of said city and county.

(d) During the progress of said suit, so many glaring frauds were exposed in connection with said election that said Hon. Alva Adams, in order to avoid the suspicion that he himself was a party thereto, was forced to intervene in said suit by filing a petition therein in which he had to admit that the said frauds were so gross that it was imperative for the welfare of the State that a searching investigation should be made as to the conduct of said election.

I quote Hon. Alva Adams' language, used in his said petition, and which reads as follows:

(e) "Your petitioner further shows that it is of the utmost importance to the people of the entire State of Colorado that the matters and questions which have arisen since the holding of the said general election relating to its conduct in the city and county of Denver, and growing out of the charges of the commission of gross frauds *as well as the disclosures appearing from the reports submitted to this court during the trial of the contempt cases, should be thoroughly and rigorously investigated for the purpose of ascertaining if possible the exact extent of the commission of fraud at the said general election, and of bringing to punishment all persons responsible therefor or connected therewith, and of securing for the future free and open elections wherein every legal and qualified voter shall have an opportunity to cast his ballot, and to have the same counted as cast, and true and legal returns thereof made to the proper authorities as designated by the general laws of the State of Colorado.*"

Upon the filing of said petition by Hon. Alva Adams, the Supreme Court, through Chief Justice Gabbert, used the following language:

(f) "The petition presented by Governor Adams does not state facts which would entitle him to the investigation requested as a matter of right. He is not a party to the proceeding, and he asks no judgment or relief personal to himself. The investigation which he requests now to be made is no different from that which we have pursued with respect to specific precincts, wherein specific charges of fraud were made, but a general and further investigation may aid the court very materially in ascertaining to what extent frauds were committed, and the identity of the persons responsible for these frauds. As was well said by counsel in the argument, when the petition was presented, there must be some persons responsible for those frauds whose identity has not yet been disclosed, because it is hardly probable that the judges and clerks of election in the immediate charge of the polls would be guilty of fraud on their own motion. There must have been some person behind who prompted them to commit those frauds. For these reasons, therefore, we shall grant the application, and the investigation will not be confined merely to an examination of the ballot boxes, but will go to all frauds of any kind or char-

acter which would constitute a violation of the order of this court, and the injunction which was heretofore issued."

* * * * *

"It must be understood further that this examination will not interfere in any way with any investigation which the General Assembly might set on foot. We have no power to interfere, but it is well to understand that in advance."

I further call your attention to the fact that said suit is still pending in the Supreme Court, and that according to my best knowledge, information and belief, said court will be unable to make said investigation into the frauds committed at said election in the said city and county of Denver, until long after the time has expired for this joint assembly to declare who was elected Governor of this State at the said general election of November 8, 1904. From the disclosures already made public in said suit, I am convinced that not less than fifteen thousand (15,000) fraudulent and illegal votes were cast for Hon. Alva Adams, my principal opponent, and that the Democratic election officers in control of said election aided and abetted the casting and counting of said fraudulent and illegal votes, and have included them in the said pretended certificates of election, sent up from the said city and county of Denver.

I further call your attention to the fact that the persons who constitute the majority of the alleged officials, who signed and certified the pretended abstracts or returns from said city and county to be laid before your body, are defendants to said suit, and are substantially charged therein as official conspirators, by whose direct official acts the stupendous fraudulent registration in said city and county was accomplished, and that the fraudulent voting already established in said suit could not possibly have occurred save and except by their official connivance; and hence their certificate, under these conditions, does not constitute a return within the true meaning of the Constitution and laws of the State, and should therefore receive no recognition at your hands as such.

I am also advised by counsel, learned in the law, that in view of the fact, arising from the extraordinary conditions aforesaid, you have no legal official returns from the city and county of Denver upon which you are authorized to take action, but that it is your duty, nevertheless, to make investigation through committees or through witnesses called before you, and ascertain as best you can which candidates for the office of Governor at the said election received the highest number of legal votes, and in that connection to ascertain as near as you can the number of legal votes received by each candidate for said office.

For the reasons above stated, I therefore respectfully protest against your canvassing the so-called returns that may be presented for your action from the city and county of Denver by said election commission.

I also respectfully request that you promptly take action through committees, or as a body in joint assembly, to ascertain as best you can the number of legal votes cast at the said election of November 8, 1904, in the said city and county of Denver, in order that you may be able to give the certificate of election for the office of Governor to the person properly entitled thereto; this to be without prejudice to any candidate for said office, to contest the election in the manner prescribed by law. An additional reason for such action on your part is that it is indispensable to prevent the legal voters of the city and county of Denver from being disfranchised.

That pending the report of said committee, the said joint assembly may adjourn to a day and hour certain, not later than the morning or forenoon of Monday, January 9, 1905, at which time to then act upon any reports that may be then made by said committee in the premises, and declare through your presiding officer who was duly elected to the office of Governor at said election.

Respectfully submitted,

JAMES H. PEABODY.

Protestant.

Mr. Griffith presented the following resolution, which was read by the Clerk:

Whereas, The Senate and House of Representatives of the State of Colorado, now convened in joint assembly for the purpose of canvassing votes cast at the election held on November 8, 1904, for State officers of said State, pursuant to the Constitution and laws of said State, has had presented and read to it the protest of Governor James H. Peabody against the opening, reading or considering of the so-called election returns from the city and county of Denver; and

Whereas, It is the sense of said joint assembly that the objections and each of them set forth in said protest are well founded,

Therefore be, and it is hereby resolved by the said joint assembly, That the said so-called election returns from the city and county of Denver shall be and are hereby declared to be of no force and effect, and that the same are hereby declared to be not such returns as are contemplated by the Constitution and laws of this State to be used as evidence of the result of the election in said city and county on said 8th day of November, A. D. 1904.

And it is hereby further resolved, That the presiding officer of this joint assembly shall forthwith appoint a committee of fifteen persons with power to divide and act in sub-committees to investigate into the conduct of said election in said city and county and elsewhere, and to ascertain and report to this joint assembly what person received the greatest number of legal votes

and the number of such legal votes cast at said election for the office of Governor at the election aforesaid; the said committee to be vested with power to examine books and papers, subpoena witnesses, take testimony, open and examine contents of ballot boxes, have the aid of expert or other evidence, and generally to do any and all acts necessary to enable said committee to fully investigate and arrive at the truth in the premises.

And it is hereby further resolved, That the said committee shall make daily reports to this joint assembly of the progress and result of its investigations at the hour of 10 o'clock a. m., of each day, at which hour this joint assembly shall meet daily until the completion of its labors and shall conclude its labors in the premises, and make and submit to this joint assembly the result of their investigation and their findings in the premises, not later than the hour of 2 p. m., on Monday, the 9th day of January, A. D. 1905, unless granted further time by this joint assembly, which said report shall advise this joint assembly touching the person who received the highest number of legal votes for the office of Governor and other executive officers at said election in said city and county, and the number of votes that the next highest candidate received for said offices at said election, to the end that on the day and hour last aforesaid, the presiding officer of this joint assembly may declare the result of said election for each and all of said offices.

Be it further resolved, That the presiding officer be requested to refrain from opening and publishing the returns from each and all of the other counties of the State until the incoming of and action upon the final report of said committee.

The question being, "Shall the resolution be adopted?" the roll was called, with the following result:

ROLL CALL OF SENATORS IN JOINT SESSION.

Yeas—Senators Alexander, Anfenger, Barela, Booth, Cornforth, De La Vergne, Drake, Ewing, Lewis, McCarthy, Millard, Morgan, Owen, Parks, Pryor, Robertson—Total, 16.

Nay—Senator Wood—Total, 1.

Present and Not Voting—Senators Adams, Sapp, Taylor—Total, 3.

Absent—Senators Bailey, Ballinger, Born, Campbell, Clayton, Crowley, DeLong, Griffith, Harris, Healy, Hill, Hughes, Jefferson, Kennedy—Total, 14.

ROLL CALL OF REPRESENTATIVES IN JOINT SESSION.

Yeas—Messrs. Adamson, Alexander, Baer, Barber, Barela, Blainey, Breckenridge, Bromley, Cannon, Church, Dodge, Dungan, Fetzer, Gleason, Gordon, Griffith, Healey, Hudgins, Keezer, King, MacLeod, McEwen, McIntyre, Radinsky, Smith, Stephen,